UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DATATREASURY CORPORATION, Plaintiff, v. SMALL VALUE PAYMENTS COMPANY, Defendant.	No. 2-04CV-85 UNOPPOSED MOTION TO CONSOLIDATE CASES

UNOPPOSED MOTION TO CONSOLIDATE CASES

COMES NOW The Clearing House Payments Company, L.L.C. ("TCH"), successor in interest to Defendant Small Value Payments Company, L.L.C. ("SVPCo"), [1] to respectfully submit the instant Unopposed Motion to Consolidate Cases (the "Unopposed Motion"). In support of its Unopposed Motion, SVPCo states the following.

This action was filed by DataTreasury on March 4, 2004. On February 24, 2006, DataTreasury filed a separate patent infringement lawsuit in a case captioned DataTreasury Corporation v. Wells Fargo & Company, et al., No. 06CV72 (the "2006 Litigation"), naming, inter alia, both the former SVPCo and TCH as defendants. DataTreasury subsequently amended its complaint in the 2006 Litigation on March 28, 2006 (the "Amended Complaint'). By agreement of the parties, TCH's response to the Amended Complaint is due June 1, 2006.

[1]As reported in its Rule 7.1 Statement, as of July 1, 2004, SVPCo merged into TCH and no longer exists.

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On January 27, 2006 SVPCo filed a motion to stay this action pending ongoing reexaminations of U.S. Patent Nos. 5,910,988 and 6,032,137 (collectively, the "patents-in-suit") by the United States Patent & Trademark Office (the "Motion to Stay," Docket No. 36). In its February 27, 2006 opposition to the Motion to Stay (the "Opposition," Docket No. 48), DataTreasury stated that it would "soon file a motion to consolidate the above-captioned lawsuit[] with the [2006 Litigation]." (Opposition at 2-3).

Under Rule 42(a) of the Federal Rules of Civil Procedure, a court may consolidate "actions involving a common question of law or fact [that] are pending before the court." This Court has "broad discretionary authority to consolidate cases in the interest of efficiency and judicial economy." Pittman v. Mem. Herman Healthcare, 124 F. Supp. 2d 446, 449 (S.D. Tex. 2000) (consolidating cases sua sponte).

Consolidation is appropriate here because this action and the 2006 Litigation involve closely related questions of law and fact. Both cases involve allegations of infringement of the same patents-in-suit, although there are additional patents at issue in the 2006 Litigation.

In addition, consolidation pursuant to Rule 42(a) of the Federal Rules of Civil Procedure is "the proper solution to the problems created by the existence of two or more cases involving the same parties and issues simultaneously pending in the same court . . . ." Morrison v. Amway Corp., 186 F.R.D. 401, 403 (S.D. Tex. 1998) (citation omitted). DataTreasury alleges in paragraphs 76 and 80 of its Amended Complaint in the 2006 Litigation that infringement claims against SVPCo for U.S. Patent Nos. 5,910,988 and 6,032,137, respectively, are excluded from the Amended Complaint in light of this lawsuit. If this Court consolidates this matter with the 2006 Litigation, all of the purported claims of DataTreasury against TCH can be resolved in a single lawsuit.

By order entered on July 27, 2005, this Court set a schedule for this case (the "Order"). However, the 2006 Litigation asserts violation of two new patents by SVPCo/TCH, involves more than 50 additional defendants and is in early stages. Any consolidated action cannot reasonably be maintained on the current schedule set forth in the Order, which sets jury selection for October 10, 2006. Accordingly, SVPCo requests that, if this Court grants the instant Agreed Motion, the Court vacate the existing Order and set a schedule for the 2006 Litigation at an appropriate time.

In light of the foregoing, TCH respectfully requests that this Court: (1) consolidate this matter with the 2006 Litigation; and (2) vacate the existing Scheduling Order in this action.

Dated: May 15, 2006

Respectfully submitted,

Preston W. McGee
State Bar No. 13620600
Flowers Davis, P.L.L.C.
1021 ESE Loop 323, Suite 200
Tyler, Texas 75701
(903) 534-8063
pmcgee@tyler.net

Of Counsel:
James H. Carter
James T. Williams
SULLIVAN & CROMWELL LLP

125 Broad Street
New York, New York 10004
(212) 558-4000

Lawrence F. Scinto
Ronald A. Clayton
FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
(212) 218-2254

Attorneys for Defendant and Counterclaimant Small Value Payments Company

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing instrument was served upon all counsel of record in the above entitled and numbered cause on this the 15th day of May, 2006.

__X__ Via ECF

Ed Hohn
D. Neil Smith
Nix Patterson & Roach, L.L.P.
205 Linda Drive
Daingerfield, Texas 75638
edhohn@nixlawfirm.com
dnsmith@nixlawfirm.com
akbruster@nixlawfirm.com
benking@nixlawfirm.com
moniking@nixlawfirm.com
kimgarner@nixlawfirm.com

Rod A. Cooper
The Cooper Law Firm
545 E. John Carpenter Frwy. Ste. 1460
Irving, Texas 75062
rcooper@cooperiplaw.com
lremmel@cooperiplaw.com
mren@cooperiplaw.com
datatreasury@cooperiplaw.com

Joe Kendall
Provost Umphrey, L.L.P.
3232 McKinney, Ste. 700

Eric Albritton
Albritton Law Firm
109 West Tyler Street

Dallas, Texas 75204
ikendall@provostumphrey.com
krupp@provostumphrey.com

Longview, Texas 75601
eric@albrittonlawfirm.com

Johnny Ward
The Law Office of T. John Ward, Jr.
P.O. Box 1231
Longview, Texas 75601
jw@jwfirm.com

Preston W. McGee

CERTIFICATE OF CONFERENCE

The undersigned certifies that on May 15, 2006, he conferred with Opposing Counsel, Karl Rupp, who agreed that Plaintiff would not contest this Motion, which is therefore unopposed at this time.

Preston W. McGee